

Access to Health Care in Bulgaria: Marginalisation of Roma

Victoria Vasey¹

IN a decision made public this year, the European Committee of Social Rights (the Committee) has for the first time found a violation of the European Charter on Social Rights (the Charter) due to a failure to provide adequate medical assistance (Article 13(1)). In its decision in *ERRC v. Bulgaria*, the Committee found that Bulgaria failed to protect the health of its Roma population in particular (Articles 11(1), (2) and (3) in conjunction with Article E).

Article 11 of the Charter provides for the right to protection of health, as follows:

Part I: Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

Part II: With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 13(1) provides for the right to social and medical assistance, as follows:

Part I: Anyone without adequate resources has the right to social and medical assistance.

Part II: With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.

Article E is the Charter's non-discrimination clause, reading as follows:

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

The ERRC lodged a collective complaint under the Protocol to the Charter in October 2007 and the Committee made its groundbreaking decision on 3 December 2008. Under the rules of the Committee, the decision was not made public until after the government had the opportunity to review and respond to the decision, in this case on 18 April 2009. In that decision, the Committee adopted a two-fold approach: It examined both the beneficiaries within the legislative framework and the practical realities of the living conditions of Romani communities and their access to healthcare. The Committee found serious failings in both areas.

¹ Victoria Vasey is Legal Consultant to the ERRC.

Inadequacies in the Bulgarian legislative framework

Bulgaria operates a system of compulsory health insurance. This system is supplemented by a non-contributory insurance system, whereby contributions are paid by the state. Such a scheme is available to those eligible for social assistance or targeted benefits for heating,² or those in receipt of unemployment benefits.³ Crucially, though, the right to social assistance for many is limited to 12 months.⁴ There is also provision, in certain cases, for exemption from the user fee usually payable on each visit to a healthcare provider or day spent in hospital.⁵ For those citizens who do not qualify for the non-contributory insurance system, there is legislative provision for some elements of healthcare (principally, emergency and obstetric care).⁶ Relatively recent legislation also provides for the payment of hospital bills for Bulgarian citizens who are unable to meet the costs of a stay in hospital, although stipulations are strict and limiting.⁷ There are further arrangements for universal emergency care for acute cases.⁸

In evaluating the legislative framework, the Committee recognises that the Bulgarian health insurance system, along with the subsidiary non-contributory element, “ensures that some of the most disadvantaged sections of the community have access to healthcare.”⁹

Nonetheless, the Committee found that sections of society were still denied their right to medical assistance, such that Bulgaria violated Article 13(1) of the Charter. The Committee focused on those who do not qualify for social assistance or who have temporarily lost the right to social assistance – and therefore health coverage – and considered that the limited healthcare provision for those persons was not adequate.¹⁰ The Committee also considered that, although the 2007 Decree providing assistance in cases of hospitalisation is a “is a step towards improving the health of poor or socially vulnerable persons”, it does not go far enough in terms of scope of care or providing a viable lasting solution.¹¹ The conclusion of the Committee was that:

[...] bearing in mind that Article 13§1 of the Revised Charter provides that persons without adequate resources, in the event of sickness, should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge, the Committee considers that the measures adopted by the Government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, thus amounting to a breach of this provision.¹²

Significant among those “poor and vulnerable persons” is the Romani population of Bulgaria, an estimated 46% of whom do not benefit from health insurance, with that figure rising to up to 90% in some communities.¹³

² *Along with some other groups, such as students and persons in detention. See: Health Insurance Act 2004, Article 40(3).*

³ *Article 40(1) ibid.*

⁴ *Social Assistance Act 1998, Articles 12b and c .*

⁵ *Article 37(1) ibid.*

⁶ *Health Act 2004, Article 82.*

⁷ *Decree No. 17 of 31 January 2007.*

⁸ *Regulation No. 25 of 4 November 1999.*

⁹ *European Committee of Social Rights, 3 December 2008, ERRC v. Bulgaria, Complaint no. 46/2007, Paragraph 42, Judgment available: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC46Merits_en.pdf.*

¹⁰ *Paragraph 43 ibid.*

¹¹ *Paragraph 44 ibid. See also: the dissenting opinion of Ms Annalisa Ciampi on this point, in particular.*

¹² *Paragraph 44 ibid.*

¹³ *Paragraph 20 ibid.*

Discrimination against Roma

Whilst the Committee's consideration of Article 13 focused on the legislative framework, its examination of Article 11 considered in detail specific issues faced by Roma and government initiatives aiming to tackle those issues. Based on wide-ranging and strong evidence, including reports from the European Commission against Racism and Intolerance,¹⁴ the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Commissioner of Human Rights,¹⁵ the Committee concluded that:

[...] there is sufficient evidence which shows that Roma communities do not live in healthy environments. This situation can in part be attributed to the failure of prevention policies by the State, for instance the lack of protective measures to guarantee clean water in Romani neighbourhoods, as well as the inadequacy of measures to ensure public health standards in housing in such neighbourhoods.¹⁶

Specific examples of discrimination presented to the Committee, including the refusal to send emergency aid ambulances to Romani districts, the segregation of Romani women in maternity wards or the use of racially offensive language by doctors, were accepted as reinforcement of "the Committee's overall conclusion that Roma in Bulgaria do not benefit from appropriate responses to their general and specific health care needs."¹⁷

Again, the Committee did recognise improvements in the efforts of the Bulgarian government; but, again, these efforts did not go far enough. The Committee concluded that:

[...] the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constitute a breach of Article 11 §§1, 2 and 3 of the Revised Charter in conjunction with Article E.¹⁸

Multiple discrimination and the way forward

This decision shows the extent of the marginalisation of the Romani population and underlines the fact that the most basic needs of Roma are not being met. Roma are not only the victims of legislative lacunae in healthcare provision: They also suffer specific discrimination. The decision also serves to highlight the importance of the interrelationship of rights, whereby one violation exacerbates another. In particular, health issues are inextricably linked to housing issues, in which respect the Committee recalled the violations of public health provisions in the case of *European Roma Rights Centre v. Bulgaria*,¹⁹ and highlighted the fact that difficulties and discrimination with regard to healthcare are not the only ones to affect Bulgaria's Romani population.

This decision marks an important step – but only one – in the effort to improve the health and wider living conditions of the Romani population of Bulgaria. The ERRC will continue in this effort. The ERRC hopes to mobilise a coordinated approach working with the Bulgarian government and with partner organisations, particularly the Bulgarian Helsinki Committee, which has already collaborated closely on this issue, to ensure that the problems and inequalities recognised in this important decision are righted.

¹⁴ *European Commission Against Racism and Intolerance, Third Report on Bulgaria, 2003*, http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/BGR-CbC-III-2004-2-ENG.pdf (accessed: 23 July 2009).

¹⁵ *Council of Europe, Commissioner for Human Rights, "Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights", Follow-up Report on Bulgaria, 2001-2005*, <https://wcd.coe.int/ViewDoc.jsp?id=983989&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (accessed: 23 July 2009).

¹⁶ *ERRC v. Bulgaria n. 9 above, paragraph 47.*

¹⁷ *Paragraph 50 ibid.*

¹⁸ *Paragraph 51 ibid.*

¹⁹ *European Committee of Social Rights, 22 April 2005, ERRC v. Bulgaria, Complaint no. 31/2005, Paragraph 47.*